L. R. A. 199, 54 Am. St. Rep. 159; *Skinner* v. *Pinney,* 19 Fla. 42, 45 Am. Rep. 1; *Deposit Co.* v. *Investment Co. et al.,* 107 La. 251, 31 So. 736; *Ayres* v. *Hubbard,* 71 Mich. 594, 40 N. W. 10; *Whiting* v. *Adams,* 66 Vt. 679, 30 Atl. 32, 25 L. R. A. 598, 44 Am. St. Rep. 875. No specific reason is given in the opinion of the principal case for allowing the higher measure of damages, the court merely saying that defendant is "justly chargeable" with the manufactured value because of its "reckless disregard" of plaintiffs' rights. The greater amount thus allowed is usually regarded partly as exemplary damages. *Heard et al.* v. *James,* 49 Miss. 236; *Beede* v. *Lamprey,* 64 N. H. 510, 15 Atl. 133, 10 Am. St. Rep. 426. But a recent opinion by a federal court rejects this doctrine and says that the increased measure of damages is due to the fact that defendant, because of his bad faith, gains no right of property in the timber by his improvements as he does when acting in good faith. *Dartmouth College* v. *International Paper Co.,* 132 Fed. 92.

EVIDENCE—ADMISSIONS OF A TENANT IN COMMON.—Defendant offered to prove by the admission of one of the tenants in common, who are now prosecuting the partition suit, that the deed under which the tenants in common claim did not contain the names of the plaintiffs as grantees at the time it was executed. *Held* (WOODS, J., dissenting), that it should be admitted as against the party who made it. *Windham et al.* v. *Howell et al.* (1907), — S. C. —, 59 S. E. Rep. 852.

The leading opinion is based entirely on analogous cases of parties claiming under a will. In all these cases admissions of a party claiming under a will have all been excluded, because, as was said in *McMullan* v. *McDill,* 110 Ill. 47: "If this was a case where a judgment could be rendered against one of the defendants without affecting the rights of the others, there might be some ground for admitting in evidence the declaration as against the defendant who made them; but such is not the case. The only question here is as to the validity of the will, and testimony which defeats one defendant—one devisee—defeats all, and a judgment against one necessarily defeats all." WIGMORE, EV., § 1081, says as to this theory: "The refinement of reasoning and scrupulosity of caution which practically shuts out all such evidence of admissions in will cases seems to be ill-judged. It is nevertheless approved by most courts today." The dissent is based on the rule of law, that an admission by one tenant in common, though not admissible against the other tenants in common, is admissible against the party making it. *Dan* v. *Brown,* 4 Cowen 483. And this would seem to be the correct view. The fact that the plaintiffs have chosen an action in which a judgment against one defeats all ought not to preclude the defendant from proving the admission. Even in the case of a will, WIGMORE, EV., § 1081, says: "The fact that there can be but a single judgment for or against the validity of the entire will constitutes only an imaginary obstacle."

EVIDENCE — EFFECT OF PLAINTIFF'S REFUSAL TO SUBMIT TO PHYSICAL EXAMINATION.—In a personal injury case the plaintiff refused to have her injuries inspected by a committee of physicians, four of whom had been

appointed by the court on motion of the defendant, and the remainder to be appointed by the plaintiff. The court ordered the committee to act, provided the plaintiff consented to be examined. *Held,* that the refusal of the plaintiff to submit to the examination should have been considered by the jury as evidence bearing on the plaintiff's good faith. (RUSSELL, J., dissents.) *City of Cedartown* v. *Brooks* (1907), — Ct. App. Ga. —, 59 S. E. Rep. 836.

Whether a plaintiff in a personal injury suit must submit to a physical examination rests within the discretion of the trial court, *Georgia R. & D. Ry. Co.* v. *Childress,* 82 Ga. 719. And it is upon this fact that the dissent is based, holding if any mistake has been made it was an abuse of the discretion of the court and should be reviewed by a court for the correction of such errors and not by a jury. Some courts deny the power to compel a plaintiff to submit to a surgical examination, e. g., *Union Pacific Railway Co.* v. *Botsford,* 141 U. S. 250; yet these same courts admit a refusal to be considered by the jury as bearing on defendant's good faith; as was said in the above case: "If he unreasonably refuses to show his injuries when asked to do so, that fact may be considered by the jury as bearing on his good faith, as in any other case of a party declining to produce the best evidence in his power." If this is the proper ruling, where no right of the court whatever is recognized to compel the plaintiff to submit, it is hard to see why, when such a right is recognized, the refusal should be excluded. Whether the plaintiff should be compelled to submit to an examination, and whether his refusal should create a presumption, would seem to be two entirely different questions.

EQUITY—LACHES.—The plaintiff was a member of a mutual life insurance company and held a policy under which the company had agreed not to exceed a fixed rate of assessment. This rate was slightly exceeded in 1895 and greatly exceeded in 1898, by which time the plaintiff had been in the company for seventeen years. He protested against the assessment of 1898, but continued payments for a short time, when he quietly dropped out, making no demand against the company until, some seven years later, he brought this action to recover damages for the wrongful cancellation of his policy. Although the statute of limitations did not run in favor of the defendant, a non-resident corporation, the court held that the plaintiff was estopped by his abandonment and laches from asserting any rights under the policy. *Brockenbrough* v. *Mutual Reserve Life Ins. Co.* (1907), — N. C. —, 59 S. E. Rep. 118.

An indignant dissenting opinion was rendered in which the time element in the case was entirely ignored. The dissenting justice seems to have thought that the majority opinion was based on the estoppel of the plaintiff to deny the rightfulness of the assessment by having made payments thereunder, and he warmly repudiates such an application of the doctrine of equitable estoppel. It can hardly be doubted, under the authorities, that the case was a proper one for the application of the doctrine of estoppel by laches, especially in view of the fact suggested in the conclusion of the majority opinion, that, since the abandonment of his policy by the plaintiff, thousands of